IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

SANTOKH SINGH VS. PUNJAB & SINGH BANK
(S.B.Civil Writ Petition No.3411/2002)

Date of Judgment:- 25th July, 2006

REPORTABLE

HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.Vijay Mehta, for the petitioner.
Mr.Jagdish Vyas, for the respodents.

BY THE COURT: -

The petitioner has filed the present writ petition with the prayer that the respondents be directed to make payment of pension and commutation and may be further directed to pay the cost of litigation. In the petition it has been stated that Punjab & Sindh Bank (in short "the Bank") introduced Punjab & Sindh Bank Employees Voluntary Retirement Scheme-2000(in short "the Scheme of 2000"). The petitioner being eligible to seek voluntary retirement under the Scheme of 2000 applied for the same and his case for voluntary retirement was accepted w.e.f. 29.1.2001. Petitioner has served 13 years of service with the bank. He being a pensioner applied for the commutation of pension with necessary documents. His case was sent to respondent no. 2 namely, Manager, Punjab & Sindh Bank, Head Office, Provident Fund Department, New

Delhi who vide letter dated 31.7.2001 informed the petitioner that he was not eligible for pension. The petitioner thereupon served a noticed fpr demand of justice through his counsel on 17.9.2001. Vide letter dated 8.10.2001 the respondent no. 3 informed the petitioner that they have sought clarification from Indian Bankers' Association but no steps were taken thereafter to grant him pension.

The respondents have contested the writ petition and filed reply thereto. In the reply, it has been stated that the Scheme of 2000 was introduced by the Bank under the approval of the Government of India. All the employees of the bank who had put in 15 years of service or attained 40 years of age were eligible to apply voluntary retirement under the Scheme of 2000. The Punjab & Sindh Bank (Employees), Pension Regulations, 1995(n short “the Regulations”) are statutory regulations. Clause 28 thereof provides that the superannuation pension shall be granted to an employee who has attained the age of superannuation specified in the Service Regulation or Settlements. It has also been provided that pension shall also be granted to an employee who opts to retire before the date of superannuation but after rendering services for a period of minimum 15 years. Originally the period of 20 years was prescribed as qualifying service for grant of voluntary retirement under Clause 29 of the Rules of 1995. However as a special measure this period reduced to 15 years by amending Clause 28 of the Regulations in exercise of powers conferred on the Bank under Section 19 read with Section 12(2) of the Banking Companies(Acquisition and Transfer of Undertakings) Act, 1980 in consultation with the Reserve Bank of India

and the previous sanction of the Central Government. The period was purposely reduced to 15 years so that an employee who opts for voluntary retirement under the Scheme of 2000 before attaining the age of superannuation could get pensionary benefits. It has therefore been prayed that the writ petition being devoid of merit may be dismissed.

I have heard Mr.Vijay Mehta learned counsel appearing for the petitioner and Mr.Jagdish Vyas learned counsel appearing for the respondents and perused the record.

Mr.Vijay Mehta learned counsel for the petitioner has argued that the petitioner was persuaded to seek voluntary retirement under the Scheme of 2000 in view of its Clause (7). He has relied upon Clause 14 of the Regulations, which for the facility of reference is reproduced hereunder:-

> "Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the Bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension.

Learned counsel for the petitioner has argued that minimum qualifying period for grant of pension according to the aforesaid Clause 14 is only ten years on the date of retirement. He has argued that clause (7) of the Scheme of 2000 categorically provides that employee seeking voluntary retirement under the Scheme will be eligible for gratuity as per Payment of Gratuity Act, 1972 or as payable under the Service Rules and

pension as per Regulations apart from the ex-gratia amount mentioned in clause (6) of the Scheme, G.P.F., leave encashment etc. It was because of this impression given by the respondent that the petitioner opted for voluntary retirement. The petitioner cannot now be permitted to go back upon their stand by refusing to pay the pensionary benefits.

On the other hand, Mr.Jagdish Vyas learned counsel for the respondents has argued that no promise was held out to the petitioner nor was any impression given him that even if he does not complete minimum 15 years of qualifying service, he shall be granted pensionary benefits. All that clause (7) of Scheme of 2000 provides that in addition to ex-gratia amount of gratuity, pension as per Regulations shall be payable. Learned counsel has invited my attention towards clause 28 of the Regulations of 1995 which reads as under :-

> "Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in these Service Regulation or Settlements.

He has argued that this Regulation was amended so as to bring it in tune with the Scheme of 2000 so that the employees who having completed minimum period of 15 years of service seeks voluntary retirement in terms of the Scheme may also be benefited thereby. Earlier this period was 20 years as provided by the Reuglation 29 and it was purposely reduced to 15 years for the advantage of the employees seeking voluntary reitrement. This has covered all such employees who are otherwise qualified for voluntary reitrement having completed 40 years

of age. He has argued that Clause 14 of the Regulations cannot be read in isolation as it starts with non-obstante clause namely “subject to other conditions contained in these Regulations” and therefore will have to yield to other regulations such as Clause 28 and 29 of Regulations. The minimum qualifying period of ten years has been prescribed only for certain specific categories such as those who have retired on account of dis-ability etc. for which separate regulations are applicable.

Learned counsel for the petitioner has placed reliance on the the judgment of the Hon'ble Supreme Court in the case of Union of India & Ors. vs. Rakesh Kumar, reported in (2001) 4 SCC p.309 especially on the observations contained in para 21, which is reproduced hereunder :-

> “No person can claim any right on the basis of decision which is dehors the statutory rules nor can there be any estoppel. Further, in such cases there cannot be any consideration on the ground of hardship. If the Rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate rules but the Court cannot direct payment of pension on the ground of so-called hardship likely to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits. As a normal rule, pensionary benefits are granted to a government servant who is required to retire on his attaining the age of compulsory retirement except in those cases where there are special provisions.”

In the present case, it is more evident from Clause (7) of the Scheme of 2000 that only such employees seeking voluntary retirement were entitled to pension who qualified for the same under the Regulations. If the petitioner has not correctly understood the Scheme and its

implications while applying for voluntary retirement, this Court cannot come to his rescue. The respondents have rather reduced the original period of 20 years prescribed for qualifying service to 15 years by amendment in Clause 28 of Regulations. This was done with the intention to cover large section of the employees who are seeking voluntary retirement upon completion of 15 years of service. The petitioner was not in the category of employees who sought voluntary retirement on account of completion of 15 years of service but he fall in the category of those who having attained the age of 40 years applied for voluntary retirement. Clause 14 of the Regulations cannot be read in isolation but will have to be construed alongwith Clause 28 and 29. Clause 14 starts with the non-obstante clause and therefore when read alongwith Regulations 28 and 29, it has to yield to the later provisions requiring at least completed 15 years of service so as to claim payment of pension on voluntary retirement.

In view of the aforesaid discussion, I do not find any merit in the present petition and therefore the same is dismissed. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.